

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Enbridge Pipelines (Illinois), L.L.C.,)	
)	
Application Pursuant to Section 8-503, 8-509 and)	07-0446
15-401 of the Public Utilities Act/The Common)	Upon Reopening
Carrier by Pipelines Law to Construct and Operate)	
a Petroleum Pipeline and When Necessary to Take)	
Private Property As Provided by the Law of)	
Eminent Domain.)	

**PLIURA INTERVERNORS' RESPONSE TO
TURNER INTERVENORS' SEPTEMBER 15, 2014 MOTION TO DISMISS**

Pliura Intervenor, by and through their joint counsel, respectfully offer the following response with respect to Turner Intervenor's (Turner) Motion to Dismiss filed September 15, 2014".

Therein, Turner raises a number of issues that demonstrate that the instant proceeding is irreparably compromised. The Certificate in Good standing issued in 07-0446 was for a 36-inch diameter pipeline that was justified by Applicant as a common carrier by pipeline because of the diversity of its supporting shippers. Recall the testimony of Dale Burgess, Director of the SAX project who testified, under oath, in the original proceeding, stating, "Prior to building a 36 inch line Enbridge conducted...an open season. ***Numerous producers and shippers want to have the Patoka hub. *** Better access to the Patoka hub is important to shippers...because it will make the desired Canadian crude available to more entities that can process it. (Enbridge Ex. 1, pages 5-6).

In his rebuttal testimony, Burgess testified under oath, explaining why the SAX project was different from the Keystone XL project. "84% of Keystone's capacity is committed to shippers via long term capacity contracts.***Only 16% of Keystone capacity will be available to shippers on a spot basis.***In contrast the [SAX] will be a fully open

access pipeline.*** Finally, the Keystone project is partially owned by a company that is both a major U.S. refiner and a large producer of Canadian crude oil in contracts to Enbridge with is neither a producer of crude nor a refiner.”(Enbridge Exhibit 1a, page, 21).

Burgess was, of course, referring to ConocoPhillips, co-owners of the Keystone XL project. Now the Applicant wishes to turn the testimony and other evidence in 07-0446 on its head. Adopting the Keystone model, we now know through the indefatigable efforts of the Intervenor herein that the SAX, as it has now been surreptitiously reimagined by Enbridge is a completely different project than what Burgess testified to. Now, there is one big shipper accounting for 95% of the committed capacity of the SAX. That one shipper is Marathon, a major refiner and now a co-owner of the SAX. There is just one other small undisclosed shipper committed to this project and little remaining capacity for spot shippers. No longer are “numerous producers and shippers” apparently clamoring for more capacity to move Canadian crude to Patoka. That need, if it ever existed, has evaporated. This project looks nothing like what was approved in the underlying 07-0446 proceeding.

Worse yet, we know that Enbridge was aware that things had so drastically changed when it pursued Eminent Domain Authority in 13-0446. It hid these facts from everyone until, at the very end of the proceedings, it couldn’t hide anymore. Recall that it was the Intervenor and not the Applicant who disclosed Enbridge’s secret alterations to this project.

And now we know that that disclosure set in motion a series of *ex parte* communications between the Staff and its attorneys and the Applicant and its attorneys. Those communications have yet to be fully disclosed. But what we know so far is that prior to a final and appealable order being issued by the Commission upon request for rehearing, the Applicant’s plans had been exposed, the staff was aware of the changes, and yet an order

in 13-0446 was entered, granting eminent domain authority for a project Enbridge had no intention of pursuing.

The current motion to reopen and amend cannot undue this mess. It is entirely of Applicant's creation, due to its unwillingness to properly disclose its intentions. Intervenor's have gone to extraordinary efforts to shed sunshine on Applicant's maneuverings. And what is apparent is that the only reasonable recourse at this stage is for the Commission to initiate proceedings to revoke the original Certificate in 07-0446.

See for direction *Quantum Pipeline Co. v. Illinois Commerce Comm'n*, 304 Ill. App. 3d 310; 709 N.E.2d 950 (3rd Dist., 1998). The Commission has the authority to reopen these proceedings and to revoke the original Certificate due to the fact that this project no longer meets the definition of a common carrier, no longer is supported by the Evidence presented by Applicant in the original proceedings, no longer serves a public need, and no longer confers a public benefit. *Quantum* instructs that Applicant is entitled to due process in such a revocation proceeding. Applicant has consistently sought to trample the due process rights of the landowners in its path, but the landowners do not share this mentality. Applicant should be afforded the due process rights that were denied Quantum. Nevertheless, the proceedings should commence to dismiss this case, revoke the certificate in good standing issued in 07-0446, and moot the granting of eminent domain authority. To the extent that Turner's motion to dismiss seeks a similar remedy, Pliura Intervenor's join in the motion through proceedings compliant with the Appellate Court's instructions in *Quantum*.

Respectfully submitted this 24th Day of September, 2014.

s/THOMAS J. PLIURA, M.D., J.D.

Thomas J. Pliura,
Attorney for “Pliura Intervenors”

Thomas J. Pliura
210 E. Center Street
P.O. Box 130
LeRoy, IL 61752
(309) 962-2299 (Tel)
(309) 962-4646 (Facsimile)
e-mail: tom.pliura@zchart.com

PROOF OF SERVICE

The undersigned certifies that on this 24th day of September, 2014 he served a copy of the foregoing document upon the individuals on the attached service list, by electronic mail.

Hon. Larry Jones
Administrative Law Judge
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
mailto:ljones@icc.illinois.gov

Amy Back & Joel Kanvik
Enbridge Energy Company, Inc.
1409 Hammond Ave.
Superior, WI 54880
mailto:joel.kanvik@enbridge.com

Bruce Stevenson, Corporate Secretary
Enbridge Pipelines (Illinois) L.L.C.
1100 Louisiana St., Ste. 3300
Houston, TX 77002-5217
mailto:bruce.stevenson@enbridge.com

Gerald Ambrose, Dale E. Thomas
& G. Darryl Reed
Attys. for Petitioner
Sidley Austin LLP
One S. Dearborn
Chicago, IL 60603
mailto:gambrose@sidley.com
mailto:dthomas@sidley.com
mailto:gdreed@sidley.com

Mark Maple, Case Manager
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
mailto:mmapple@icc.illinois.gov

Thomas J. Pliura
210 E. Center Street
P.O. Box 130
LeRoy, IL 61752
(309) 962-2299 (Tel)
(309) 962-4646 (Facsimile)
e-mail: tom.pliura@zchart.com

John Feeley
Office of General Counsel
Illinois Commerce Commission,
160 N. LaSalle, Ste. C-800
Chicago, IL 60601
mailto:jfeeley@icc.illinois.gov

James V. Olivero
Office of General Counsel
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
mailto:jolivero@icc.illinois.gov

Mercer Turner,
Law Office of Mercer Turner, P.C.
202 N. Prospect, Ste. 202
Bloomington, IL 61701
E-Mail: mercerturner1@msn.com

Diana Hospelhorn
McLean County Administration
115 E Washington St Rm 401
Bloomington, IL 61701
diana.hospelhorn@mcleancountyil.gov

Don Knapp
First Assistant States Attorney
Government Center
115 E Washington St Rm 401
Bloomington, IL 61701
don.knapp@mcleancountyil.gov

s/THOMAS J. PLIURA, M.D., J.D.
Thomas J. Pliura,
Attorney for "Pliura Intervenors"